

Taxpayer Husband and Taxpayer Spouse sued the company which employed the driver who struck Taxpayer Husband, causing the collision. The lawsuit was filed in State, where the collision occurred, and alleged that the injuries and damages suffered were the result of acts of negligence, reckless, willful and/or wonton acts of the driver and the company for whom the driver was employed. The lawsuit requested damages for economic injuries (medical bills), for noneconomic injuries of mental anguish, loss of enjoyment of life, disability, pain, suffering, and other injuries and damages (collectively, "pain and suffering"), as well as damages for loss of consortium.

A trial court in State found the company liable, and a jury awarded Taxpayer Husband \$x amount of damages, for past and future economic damages, and \$y amount of damages for past and future noneconomic damages (pain and suffering). The jury also awarded Taxpayer Spouse \$z amount of damages for past and future loss of consortium. The rulings and amounts of damages were upheld on appeal. The Taxpayers received the damages in Taxable Year.

LAW AND ANALYSIS

Section 104(a)(2) provides, in general, that gross income does not include the amount of any damages received (whether by suit or agreement) on account of personal physical injuries or physical sickness.

Section 1.104-1(c)(1) of the Income Tax Regulations provides that the term "damages received (whether by suit or agreement)" means an amount received through prosecution of a legal suit or action based upon tort or tort type rights or through a settlement agreement entered into in lieu of such prosecution.

Section 1.104-1(c)(1) further provides "damages for emotional distress attributable to a physical injury or physical sickness are excluded from income under section 104(a)(2)." See *also* Section 1605 of the Small Business Protection Act of 1996, H.R. Conf. Rep. No. 104-737, at 301 (1996), *reprinted in* 1996 U.S.C.C.A.N. 1474, 1793 (legislative history notes that "... the exclusion from gross income applies to any damages received based on a claim of emotional distress that is attributable to the physical injury or physical sickness.").

Section 1605 of the Small Business Protection Act of 1996 limits the exclusion from gross income provided by section 104(a)(2) to amounts received on account of personal physical injuries or physical sickness. The legislative history to the 1996 amendment provides:

... If an action has its origin in a physical injury or physical sickness, then all damages (other than punitive damages) that flow therefrom are treated as damages received on account of personal physical injuries or physical sickness whether or not the recipient of the damages is the injured party. For example, damages (other than punitive damages) received by an

individual on account of a claim of loss of consortium due to the physical injury or physical sickness of such individual's spouse are excludable from gross income.

In this case, Taxpayer Husband and Taxpayer Spouse recovered damages under the laws of State permitting recovery of a broad range of damages, including damages for pain and suffering, and damages for loss of consortium. Thus, Taxpayer Husband and Taxpayer Spouse received their damages in a suit or action based on tort or tort type rights within the meaning of § 1.104-1(c). In addition, the amounts paid to Taxpayer Husband for (1) past and future economic damages and (2) past and future noneconomic damages (pain and suffering), and the amount paid to Taxpayer Spouse for past and future loss of consortium were directly attributable and linked to the physical injuries Taxpayer Husband received when the collision occurred.

HOLDING

Based strictly on the information submitted and representations made, we conclude that (1) the amount in damages received by Taxpayer Husband for past and future economic damages (medical bills); (2) the amount in damages received by Taxpayer Husband for past and future noneconomic damages (pain and suffering); and (3) the amount in damages received by Taxpayer Spouse for past and future loss of consortium are compensation for the personal injuries Taxpayer Husband sustained in the collision. Therefore, such amounts are excludable from Taxpayer Husband's and Taxpayer Spouse's gross income under § 104(a)(2).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: